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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,920	01/22/2004	Stephen W. Foss	6080 P30B	5740

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EXAMINER

PIERCE, JEREMY R

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 12/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/762,920

Applicant(s)

FOSS ET AL.

Examiner

Jeremy R. Pierce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-78 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-78 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/4/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Oath/Declaration

1. This Application is filed as a Divisional from Application 09/565,138 and a Continuation-in-part from Application 10/655,330. However, the inventive entity of the present Application is not the same as either of the parent Applications.

If an inventor named in a prior application is not an inventor in a continuation or divisional application filed under 37 CFR 1.53(b), the continuation or divisional application may either be filed (A) with a copy of an oath or declaration from a prior application and a statement requesting the deletion of the name or names of the person or persons who are not inventors of the invention being claimed in the continuation or divisional application (see 37 CFR 1.63(d)), or (B) with a newly executed oath or declaration naming the correct inventive entity. If an inventor named in a prior application is not an inventor in a continuation or divisional application filed under 37 CFR 1.53(d), the request for filing the continuation or divisional application must be accompanied by a statement requesting the deletion of the name or names of the person or persons who are not inventors of the invention being claimed in the continuation or divisional application (see 37 CFR 1.53(d)(4)). A continuation or divisional application filed under 37 CFR 1.53(b) of a prior application in which a petition (or request) under 37 CFR 1.48 to add an inventor was filed should be filed with a copy of the executed declaration naming the correct inventive entity from the prior application or a newly executed declaration naming the correct inventive entity. A copy

of any decision under 37 CFR 1.48 from the prior application is not required to be filed in the continuation or divisional application.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-78 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-78 are vague and indefinite. Claim 1 is the only independent claim present, and it fails to define anything. Claim 1 recites, "A product including one or more component sections of thermoplastic polymer with incorporated anti-microbial additive with efficient sizing, placement and quantity therein and at least one other component acting to afford a primary characteristic of one or more of strength, color, fire retardance, odor suppression or modification, hydrophilic or hydrophobic characteristic promoting or suppressing, texture controlling and ultraviolet resistance to the product, the product as a whole being constructed and arranged to suppress substantially microbial growth and the like (e.g., fungal, mildew or mold activity) therein and/or to impart such suppression action to an environment in which the product is ultimately used." No searchable product is set forth in this claim. It merely describes a mish-mash of possibilities. Claim 2, which is presumed to be further limiting, merely recites "the product [of claim 1] is of coherent form and has a distinct end product usage." This

is no way helps define a structure. Additional dependent claims (such as 3-5 and 39-78) describe so many forms that the product can take, they serve as further evidence that Applicant has failed to define an invention in claim 1. Claim 1 has set forth no boundaries as to what the Examiner is supposed to search.

Claim 25 recites the core of each fiber to have properties similar to cotton. Claim 26 recites the properties are similar to wool. Claim 27 recites properties between cotton and wool. These types of claim limitations are indefinite. It is unclear what is necessary in order to obtain a material that has properties between cotton and wool. What kind of cotton? What kind of ^{wool} ~~cotton~~? What specific properties? How similar must they be?

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-78 are rejected under 35 U.S.C. 102(b) as being anticipated by Reinchr et al. (U.S. Patent No. 4,357,476).

The use of anti-microbial plastics is well known, as taught by Reinchr et al. (column 33, lines 4-10).

6. Claims 1-78 are rejected under 35 U.S.C. 102(b) as being anticipated by Ando et al. (U.S. Patent No. 5,064,599).

Ando et al. disclose forming sheath/core conjugate fibers having a high melting core and a low melting sheath in a range of 30:70 to 70:30 (column 3, line 5 et seq.). The sheath component includes .06-5 weight percent of an anti-bacterial metal ion including silver, copper, and zinc ions (column 4, lines 19-29). Ando et al. also teach using zeolite particles (column 4, lines 32-68).

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-78 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No. 6,723,428.

Although the conflicting claims are not identical, they are not patentably distinct from

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each other because both are directed to sheath core fibers having anti-microbial properties.

9. Claims 1-78 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,841,244.

Although the conflicting claims are not identical, they are not patentably distinct from each other because both are directed to sheath core fibers having anti-microbial properties.

10. Claims 1-78 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,946,196.

Although the conflicting claims are not identical, they are not patentably distinct from each other because both are directed to sheath core fibers having anti-microbial properties.

11. Claims 1-78 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 85-101 of copending Application No. 10/655,330. Although the conflicting claims are not identical, they are not patentably distinct from each other because both are directed to sheath core fibers having anti-microbial properties.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

12. Claims 1-78 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-52 of copending Application No. 10/765,255. Although the conflicting claims are not identical,

they are not patentably distinct from each other because both are directed to sheath core fibers having anti-microbial properties.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

13. Claims 1-78 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-22 of copending Application No. 10/765,414. Although the conflicting claims are not identical, they are not patentably distinct from each other because both are directed to sheath core fibers having anti-microbial properties.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

14. Claims 1-78 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 2-27 of copending Application No. 10/785,850. Although the conflicting claims are not identical, they are not patentably distinct from each other because both are directed to sheath core fibers having anti-microbial properties.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

15. Claims 1-78 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 27-36 and 82-94 of copending Application No. 10/406,720. Although the conflicting claims are not

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identical, they are not patentably distinct from each other because both are directed to sheath core fibers having anti-microbial properties.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (571) 272-1479. The examiner can normally be reached on normal business hours, but works flextime hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JRP

Jeremy R. Pierce
December 9, 2005


TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700